**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**SECOND APPEAL NO.240 OF 2006**

Nivrutti Bhimaji Adhav ...Appellant

vs.

Kashinath Ramji Adhav ...Respondent

Mr.Kishor Patil i/b Mr.P.N.Joshi for the Appellant
Mr.Anilkumar Patil for the Respondent

**CORAM: A.S.OKA, J.**
**DATED: JULY 25, 2006.**

**P.C.:**

1. Heard learned Advocate for the Appellant. The Appellant is the original Defendant. The Trial Court dismissed the suit filed by the Respondent-Plaintiff. An Appeal was preferred by the Respondent-Plaintiff in the District Court. The District Court passed a decree for specific performance of the suit agreement.

2. The learned Advocate for the Appellant submitted that the Respondent-Plaintiff had taken inconsistent stand. He had pleaded that he was in adverse possession of the suit land. He pointed out that in the Trial Court a case was sought to be made out that the Respondent-Plaintiff has become owner as a result of relinquishment by the Appellant. He submitted that the Trial Court held that the Respondent was not ready and willing to perform his part of the suit agreement. He submitted that even the suit notice was belatedly issued and the suit was filed in the year 2000 for enforcing the

agreement of 25th November 1989.

3. I have considered the submissions. So far as the first submission is concerned, the Appellate Court has not granted any relief on the basis of the plea of adverse possession or of ownership raised by the Respondent. The Decree is passed for specific performance.

4. The Courts below have recorded a concurrent finding that the Respondent-Plaintiff has proved the execution of the suit agreement and that even the terms and conditions in the suit agreement have been proved by the Respondent. Issue of limitation was not framed by the Trial Court. Issue of limitation was not agitated even in the Appellate Court. So far as readiness and willingness is concerned, the Appellate Court has recorded a finding that the necessary averments as required by section 16(c) of the Specific Relief Act, 1963 have been incorporated in paragraph 7 of the plaint. The finding of fact has been recorded that out of agreed consideration of Rs.8001/- a sum of Rs.7001/- has been paid by the Appellant to the Respondent.

5. In view of this factual position, no fault can be found with the decree of specific performance passed by the Trial Court. There is no merit in the Second Appeal. Second Appeal is dismissed with no order as to costs.

**Judge.**